

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Toriano Green, #285267,)	C.A. #6:08-4152-PMD
)	
)	
Petitioner,)	
)	
vs.)	<u>ORDER</u>
)	
Robert Stevenson, Warden, Broad River)	
Correctional Institution,)	
)	
Respondents.)	

This matter is before the court upon the magistrate judge's recommendation that respondents' motion for summary judgment be granted and the habeas petition dismissed with prejudice. Because petitioner is pro se, this matter was referred to the magistrate judge.¹

This Court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). No objections have been filed to the magistrate judge's report, however, petitioner filed a Motion to Dismiss on September 24,

¹Pursuant to the provisions of Title 28 United States Code, § 636(b)(1)(B), and Local Rule 73.02(B)(2)(c), D.S.C., the magistrate judge is authorized to review all pretrial matters in cases filed under Title 42 United States Code, § 1983, and submit findings and recommendations to this Court.

2009.

The magistrate judge has recommended granting respondents' motion for summary judgment because it was not filed within the one-year statute of limitations for filing federal habeas petitions. Petitioner in his motion to dismiss agrees that his petition is untimely and states "That the respondents [sic] position that the petitioner's [sic] has failed to meet the statute of limitation period is correct." Petitioner further moves the court to dismiss the petition without prejudice.

A review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. For the reasons articulated by the magistrate judge, it is hereby **ordered** that respondents' motion for summary judgment is **GRANTED**, petitioner's motion to dismiss is **MOOT**, and the within case is hereby **DISMISSED with prejudice** as it is barred by U.S.C. § 2244(d).

ORDERED, that the magistrate judge's report and recommendation is adopted as the order of this Court, and

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

October 30, 2009
Charleston, South Carolina